99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-767

COMMERCIAL FISHING INDUSTRY VESSEL LIABILITY AND SAFETY ACT OF 1986

AUGUST 7, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 5013]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 5013) to establish guidelines for damage awards in actions for personal injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Fishing Industry Vessel Liability and Safety Act of 1986".

TITLE I—LIABILITY FOR PERSONAL INJURY ON FISHING, FISH PROCESSING, AND FISH TENDER VESSELS

SEC. 101. LIMITATIONS ON LIABILITY FOR PERSONAL INJURIES TO SEAMEN ON COMMERCIAL FISHING INDUSTRY VESSELS.

The Act of March 4, 1915 (Chapter 153; 38 Stat. 1164) is amended by adding at the end the following:

"SEC. 21 (a) In this section—

"(1) 'fishing vessel', 'fish processing vessel', and 'fish tender vessel' have the same meanings given those terms in section 2101 of title 46, United States Code.

"(2) an illness, disability, or injury shall be considered temporary if, after cure, the seaman—

"(A) can return to the seaman's previous (or equivalent) employment;

"(B) does not require further medical care with respect to the illness, disability, or injury; and

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"(C) does not have a substantial loss of sight or hearing, does not have a loss of an appendage, and does not have permanent disfigurement.

"(b) A civil action (including an action for contribution or indemnification) may not be brought under any law of the United States against the employer of a seaman, a vessel owner, or a vessel for loss suffered as the result of a temporary illness, disability, or injury suffered by a seaman during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel if the employer or vessel owner provides—

"(1) cure for the ill, disabled, or injured seaman; and

"(2) maintenancce during the period of illness, disability, or injury in an amount equal to—

"(A) for each day that vessel is on a voyage, the greater of—

"(i) 80 percent of the wage or share the seaman would have received for that day if the seaman had been employed on the vessel for that voyage; or

"(ii) $30; and

"(B) for each day that vessel is not on a voyage, $30.

"(c) The Secretary of Transportation shall annually review the dollar figure in subparagraphs (A)(ii) and (B) of subsection (b)(2). The Secretary may periodically increase or decrease that figure, but not by more than the percentage increase or decrease in the Consumer Price Index for the period considered.

"(d)(1) Except as provided in paragraphs (2) and (3), the liability of the owner of a fishing, fish processing, or fish tender vessel, and the employer of a seaman on any of those vessels, under a law of the United States for a seaman's illness, disability, or injury (other than a temporary illness, disability, or injury) or death arising out of an incident during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel is limited to $500,000. The limitation provided in this paragraph applies to an action for contribution or indemnification against the owner or employer.

"(2) The limitation under paragraph (1) does not apply with respect to hospital and medical expenses.

"(3) Paragraph (1) does not apply to an owner or employer if—

"(A) the illness, disability, injury, or death was caused by the gross negligence or willful misconduct of the owner or employer, as the case may be;

"(B) the illness, disability, injury, or death was primarily caused by a violation of chapter 45 of title 46, United States Code, that was within the knowledge of the owner or employer, as the case may be; or

"(C) the owner or employer, as the case may be, does not provide cure and maintenance as described in paragraphs (1) and (2) of subsection (b).".

SEC. 102. STATUTE OF LIMITATIONS.

The first section of the Act entitled "An Act to provide a uniform three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes" (46 App. U.S.C. 763a) is amended by striking "That," and inserting "That (a)" and by adding at the end the following:

"(b) A civil action against the employer of a seaman or the owner of a fishing, fish processing, or fish tender vessel for recovery of damages for illness, injury, disability, or death suffered during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel may not be maintained unless started within 2 years from the date the cause of action accrued.".

TITLE II—COMMERCIAL FISHING INDUSTRY VESSEL SAFETY

SEC. 201. FISHING INDUSTRY VESSEL SAFETY REQUIREMENTS.

(a) Chapter 45 of title 46, United States Code, is amended to read as follows:

"CHAPTER 45—COMMERCIAL FISHING INDUSTRY VESSELS

"Sec.
"4501. Application.
"4502. Safety standards.
"4503. Equivalency.
"4504. Prohibited acts.
"4505. Termination of unsafe operations.
"4506. Exemptions.
"4507. Penalties.
"4508. Commercial Fishing Industry Vessel Advisory Committee.

"§ 4501. Application

"(a) This chapter applies to a fishing, fish processing, and fish tender vessel.

"(b) This chapter does not apply to the carriage of bulk dangerous cargoes regulated under chapter 37 of this title.

"§ 4502. Safety standards

"(a) A fishing, fish processing, and fish tender vessel must—

"(1) if propelled by machinery, be provided with fire extinguishers, capable of promptly and effectively extinguishing a combustible or flammable liquid fuel, that shall be kept in a condition for immediate and effective use and so placed as to be readily accessible;

"(2) carry at least one readily accessible life preserver or other lifesaving device for each individual on board;

"(3) have the carburetors of each engine on board the vessel (except an outboard motor) using gasoline as a fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device;

"(4) if using a volatile liquid as fuel, be provided with the means for properly and efficiently ventilating enclosed spaces, including engine and fuel tank compartments, so as to remove any explosive or flammable gases; and

"(5) be provided with visual distress signals.

"(b) In addition to the requirements of subsection (a) of this section, for a documented fishing, fish processing, or fish tender vessel operating beyond the Boundary Line, the Secretary shall prescribe regulations for the installation, maintenance, and use of—

"(1) at least one readily accessible emergency position indicating beacon, or similar electronic position indicating device;

"(2) lifeboats or liferafts sufficient to accommodate all individuals on board;

"(3) at least one readily accessible exposure suit required under section 3102 of this title for each individual on board;

"(4) radio equipment sufficient to effectively communicate with land-based search and rescue facilities; and

"(5) other equipment required to minimize the risk of injury to crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

"(c) For an uninspected fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products, the Secretary shall prescribe additional regulations for—

"(1) navigation equipment, including radars, fathometers, compasses, radar reflectors, lights, sound-producing devices, nautical charts, and anchors;

"(2) life saving equipment, including life preservers, exposure suits, lifeboats or liferafts, emergency position indicating radio beacons, signaling devices, bilge pumps, bilge alarms, life rails and grab rails and medicine chests;

"(3) fire protection and firefighting equipment, including fire alarms, portable and semiportable fire extinguishing equipment, and flame arrestors;

"(4) the use and installation of insulation material;

"(5) storage methods for flammable or combustible materials; and

"(6) fuel, ventilation, and electrical systems.

"(d)(1) In addition to the other requirements of this section, the Secretary shall prescribe regulations for the operating stability of a documented fishing, fish processing, or fish tender vessel—

"(A) the keel for which was laid after December 31, 1987; or

"(B) whose physical characteristics are substantially altered after December 31, 1987, in a manner affecting the vessel's operating stability.

"(2) The Secretary may accept, as evidence of compliance by a vessel with this subsection, a certification of compliance issued by the person providing insurance for the vessel.

"(e) In prescribing regulations under this section, the Secretary—

"(1) shall consider the specialized nature and economics of the type of vessel operations and the character, design, and construction of the type of vessel;

"(2) shall consult with representatives of the private sector having experience in the operation of vessels to which this chapter applies to ensure the practicability of these regulations; and

"(3) may not require the alteration of a vessel or associated equipment or of the construction of a vessel or manufacture of a particular item of equipment that was begun before the effective date of the regulation.

"§ 4503. Equivalency

"An uninspected fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products—

"(1) is deemed to comply with the requirements of this chapter if it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention for Safety of Life at Sea to which the United States Government is a party, and

"(2) may not be required by the Secretary to alter or replace the equipment or structural requirements required under this chapter

"§ 4504. Prohibited acts

"A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

"§ 4505. Termination of unsafe operations

"If an official charged with the enforcement of this chapter observes a fishing, fish processing, or fish tender vessel being operated in an unsafe condition and, in the judgment of that official, the operation creates an especially hazardous condition, the official may direct the operator of the vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, including directing the operator to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

"§ 4506. Exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when, under regulations (including regulations on special operating conditions) prescribed by the Secretary, the Secretary finds that—

"(1) good cause exists for granting an exemption; and

"(2) safety will not be adversely affected.

"(b) A fishing, fish processing, or fish tender vessel under 36 feet overall in length that does not operate on the high seas is exempt from the provisions of section 4502(b)(2).

"§ 4507. Penalties

"(a) If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

"(b) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

"§ 4508. Commercial Fishing Industry Vessel Advisory Committee

"(a) The Secretary shall establish a Commercial Fishing Industry Vessel Advisory Committee. The Committee—

"(1) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to the safe operation of fishing, fish processing, and fish tender vessels, including navigation safety, safety equipment and procedures, marine insurance, vessel design, construction, maintenance and operation, and personnel qualifications and training;

"(2) may review proposed regulations under this chapter;

"(3) may make available to Congress any information, advice, and recommendations that the Committee is authorized to give to the Secretary;

"(4) shall meet at the call of the Secretary, but not less than once during each calendar year.

"(b)(1) The Committee shall consist of seventeen members with particular expertise, knowledge, and experience regarding the commercial fishing industry as follows:

"(A) ten members from the commercial fishing industry who—

"(i) reflect a regional and representational balance; and

"(ii) have experience in the operation of vessels to which this chapter applies or as a crew member or processing line worker on a fish processing vessel;

"(B) three members from the general public, including, whenever possible, an independent expert or consultant in maritime safety and a member of a nation-

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al organization composed of fishing, fish processing, or fish tender vessel and marine insurance interests;

"(C) one member from each of the following—

"(i) naval architects or marine surveyors;

"(ii) manufacturers of fishing, fish processing, or fish tender vessel equipment;

"(iii) education or training professionals related to fishing, fish processing, or fish tender vessel safety or personnel qualifications; and

"(iv) underwriters engaged in insuring fishing, fish processing; or fish tender vessels.

"(2) At least once a year, the Secretary shall publish a notice in the Federal Register and in newspapers of general circulation in coastal areas soliciting nominations for membership on the Committee, and, after timely notice is published, appoint the members of the Committee. A member may be appointed to any number of terms.

"(3)(A) The term of a member is three years.

"(B) If a vacancy occurs in the membership of the Committee, the Secretary shall appoint a member to fill the remainder of the vacated term.

"(4) The Committee shall elect one of its members as the Chairman and one of its members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

"(5) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to fishing, fish processing, or fish tender vessels under the jurisdiction of their respective agencies. The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 App. U.S.C.).

"(c)(1) The Secretary shall whenever practicable, consult with the Committee before taking any significant action related to the safe operation of fishing, fish processing, or fish tender vessels.

"(2) The Secretary shall consider the information, advice, and recommendations of the Committee in consulting with other agencies and the public or in formulating policy regarding the safe operation of fishing, fish processing, or fish tender vessels.

"(d)(1) Except an officer or employee of the United States or a member of the Armed Forces, a member of the Committee, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, is entitled to receive—

"(A) compensation at a rate fixed by the Secretary not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5 including travel time; and

"(B) Travel or transportation expenses under section 5703 of title 5.

"(2) Payments under this section do not render a member of the Committee an officer or employee of the United States or a member of the Armed Forces for any purpose.

"(3) A member of the Committee who is an officer or employees of the United States or a member of the Armed Forces may not receive additional pay on account of the member's service on the Committee.

"(4) The provisions of this section relating to an officer or employee of the United States or a member of the Armed Forces do not apply to a member of a reserve component of the Armed Forces unless that member is in an active status.

"(e)(1) The Federal Advisory Committee Act (5 U.S.C. App.) applies to the Committee, except that the Committee terminates on September 30, 1991.

"(2) Two years prior to the termination date in this section, the Committee shall submit to Congress its recommendation whether the Committee should be renewed and continued beyond the termination date.".

(b) Of the members first appointed to the Commercial Fishing Industry Advisory Committee under section 4508 of title 46, United States Code—

(1) one-third of the members shall serve a term of one year and one-third of the members shall serve a term of two years, to be determined by lot at the first meeting of the Committee; and

(2) terms may be adjusted to coincide with the Government's fiscal year.

SEC. 202. ACCIDENT DATA STATISTICS.

(a) Chapter 61 of title 46, United States Code, is amended by adding at the end the following new section:

"§ 6104. Commercial fishing industry vessel casualty statistics

"(a) The Secretary shall compile statistics concerning marine casualties from data compiled from insurers of fishing, fish processing, and fish tender vessels.

"(b) A person underwriting primary insurance for fishing, fish processing, or fish tender vessels shall submit periodically to the Secretary data concerning marine casualties that is required by regulations prescribed by the Secretary. Information reported to the Secretary under this subsection related to a trade secret or other matter referred to in section 1905 of title 18, or authorized to be exempt from public disclosure by section 552(b) of title 5, is confidential under section 1905. However, the Secretary may release the totals of the statistics that are compiled.

"(c) After consulting with the insurance industry, the Secretary shall prescribe regulations under this section to gather a statistical base for analyzing vessel risks."

"(b) The analysis for chapter 61 of title 46, United States Code, is amended by adding at the end the following:

"6104. Commercial fishing industry vessel casualty statistics"

"(c) Section 6103 of title 46, United States Code, is amended as follows:

(1) before "An" insert "(a)"; and

(2) add the following new subsection:

"(b) A person violating section 6104 of this title or a regulation prescribed under that section is liable to the Government for a civil penalty of not more than $5,000.".

TITLE III—FISHERY MANAGEMENT SAFETY

SEC. 30. Section 303(a)(2) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(a)(2)), is amended to read as follows:

"(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, the likely effect of the selected and any alternative conservation and management measures on safety of persons and vessels engaged in the fishery, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;".

PURPOSE

The purpose of this legislation is to establish a new system of liability and compensation for crewmembers of commercial fishing industry vessels who suffer an illness, disability, or injury, or who are killed during the course of their employment. The bill also requires commercial fishing industry vessels to comply with certain safety equipment and operating requirements. It is hoped that the legislation will facilitate the availability and adequacy of affordable insurance for the payment of claims against the owner of the vessel or the employer of the seaman.

In addition, the legislation establishes a safety advisory committee as a forum for discussing issues regarding the safe operation of fishing industry vessels, requires the collection and analysis of fishing industry vessel casualty statistics, and provides for the consideration of fishing industry vessel safety in the development of fishery management plans.

Fishing industry vessels include fishing, fish processing, and fish tender vessels, hereinafter referred to only as "fishing vessels" or the "commercial fishing vessel industry."

BACKGROUND AND NEED

For a number of years, the Committee has been concerned about the availability of liability insurance and the cost of premiums for

vessles engaged in commercial fishing operations. The availability and cost of liability insurance have become crippling problems to many industries nationwide and have likewise had a serious economic impact on the fishing industry. Factors associated only with maritime industries have had a devastating impact on premiums and have caused marine insurance companies to depart from the fishing vessel insurance marketplace altogether. These factors include the inherently unsafe nature of the fishing industry, the special treatment afforded by the unseaworthiness doctrine under General Maritime Law, and the impact on liability of the Jones Act (46 App. U.S.C. 688), which permits an action with a right of trial by jury.

The inability to obtain liability insurance does not lie solely with the commercial fishing industry. During the late 1970's and early 1980's, insurance companies provided insurance to almost anyone at rock-bottom prices. The insurance companies then invested the funds from the premiums in high-interest-bearing securities. As interest rates declined in the mid-1980's, the insurers found they could no longer make the profits they had earlier experienced, and they looked to increasing premiums to make up the difference. In addition to changing economic conditions, settlements in liability cases have increased significantly, and the fishermen have become more aware of their right to compensation. In general, there has been a dramatic increase in premium costs, combined with higher deductibles and less comprehensive coverage. In New England, in Alaska, and on the West Coast, the cost of protection and indemnity (P&I) insurance has more than doubled since 1984. In some instances, it has tripled. Additionally, there has been an abrupt decline in the number of insurance companies participating in the commercial fishing vessel insurance market.

The nature of the system for compensating injured fishermen, as well as other seagoing personnel, differs dramatically from that of most other workers. Under existing law, an injured seaman on a fishing vessel can pursue, if necessary, any or all of three separate causes of action: maintenance and cure, unseaworthiness, and the Jones Act.

The "maintenance and cure" remedy under "General Maritime Law" imposes a legal obligation on the vessel owner to maintain and cure a seaman injured while in service to a vessel. "Maintenance" is intended to compensate the seaman for expenses incurred for ordinary support during recovery from an illness, disability, or injury; "cure" is intended to pay for all medical expenses to the point of maximum physical recovery.

Maritime law also allows an injured seaman to recover from a vessel owner if the injury is caused by the unseaworthy condition of the vessel, its equipment, or its crew without establishing a high degree of negligence on the part of the owner. Courts have adopted an increasingly broad interpretation of unseaworthiness in recent years.

The Jones Act provides that "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury" (46 App. U.S.C. 688). The Jones Act is based on the negligence of the vessel owner. Suits under the Jones Act are very popu-

lar in personal injury cases because, unlike the other remedies afforded by admiralty law, a plaintiff in a Jones Act case is entitled to a trial by jury. If the plaintiff chooses to pursue his action based on a violation of the Jones Act, he can also sue for maintenance and cure and allege unseaworthiness. The jury can then consider the entire complaint.

Many fishing vessel owners complain that the open-ended liability and the guarantee of a jury trial afforded by current law have created strong incentives for injured seamen to litigate in the hope of obtaining a large settlement, even for relatively minor injuries.

The insurance problems of the fishing industry have also been exacerbated by the risky nature of commercial fishing operations. According to the United States Coast Guard, commercial fishing is one of the most dangerous occupations in the United States. Loss rates of large fishing vesseles are five to seven times higher than for U.S. oceangoing cargo ships. The death rate for commercial fishermen is seven times the national average for all industrial groups. In the past, the Congress has not imposed on commercial fishing vessles the kind of rigorous safety standards or periodic inspections mandated under Federal law for other comercial vessels.

The tendency of insurance companies either to raise premiums or to withdraw entirely from fishing vessel insurance results, according to that industry, from simple economic concerns. American Institute of Marine Underwriters (AIMU) members have collected $170,194,000 in gross premiums on both hull and P&I coverages on fishing boats over the past five years. During the same time period, they paid out $213,933,000 in losses. Add this to the insurance companies' cost of doing business, and the combined loss and expense ratio for companies writing fishing vessel insurance has been approximately 156 percent over the past five years. This means that, for every $1.00 taken in by the companies (excluding profits on investments) in this class of business, $1.56 has been expended.

Overall, the evidence shows that the current system for compensating injured fishermen is unpredictable, slow, prone to litigation, and troublesome—not only for the insurance industry but also for those who either own or who are employed on fishing vessels. The dilemma for seamen is made more severe by the fact that safety problems—which contribute to the insurance crisis—are, in turn, exacerbated when economic pressure forces boat operators to fish in harsher weather or further from shore than normal or to postpone needed safety improvements. Thus, there are incentives for insurers, vessel owners, and seamen to seek changes in law that will make fishing injuries both less likely to occur and subject to a more equitable and efficient system of compensation when they do occur.

This combination of events has made the availability of insurance at reasonable costs a near impossibility. In those instances where insurance is available, the costs have been prohibitive. In those cases where insurance is not available or too costly to purchase, some fishing vessel owner-employers have been operating vessels with no insurance. Without insurance, those fishermen who are injured may not be adequately compensated. In addition, some fishing vessels continue to operate without sufficient regard for the

safety of the vessel itself or the maintenance of equipment on board.

Discussion

As reported by the Committee, H.R. 5013 recognizes that under current law an injured seaman may sue his employer for hospital and medical expenses, lost wages, and, under certain circumstances, other nonpecuniary damages. Section 101 changes current law by adding a new section 21 to the Act of March 4, 1915 (the Jones Act). The new section 21 provides that an individual who suffers a "temporary illness, disability, or injury" may not sue the vessel owner or employer (or the vessel itself) as long as the owner or employer underwrites his medical expenses (referred to as providing "cure"), and makes "maintenance" payments during the period of his illness at a daily rate equal to the greater of 80 percent of the individual's wages or shares or $30. This section, however, does not change the nature or duration of the vessel owner's or employer's obligation to provide maintenance and cure as required under current admiralty and maritime law.

For the first time, the new section 21 provides a limitation on an owner's or employer's liability for a seaman's nontemporary illness, disability, injury, or death on a commercial fishing industry vessel. The liability of a vessel owner or employer is limited to a maximum of $500,000, exciuding hospital and medical expenses, per individual seamen per incident.

The prohibition and limitation created by this section is intended to be comprehensive and would apply to actions brought in behalf of a seaman under the Jones Act, the Death on the High Seas Act, and admiralty or maritime law. The prohibition and limitation extends to any action brought by a third party for contribution or indemnification. The limitation would apply on a per-individual-per-incident basis.

The Committee intends that the vessel owner or employer shall provide maintenance and cure payments on a reasonable and timely basis consistent with current practice. Payments for cure include all necessary medical costs actually incurred by the seaman as a result of the illness, injury, or disability until the time a reasonable assessment of the medical evidence indicates that the seaman has reached his maximum level of recovery.

The determination of maintenance payments shall be made in one of two ways. If the seaman is paid a wage, he shall be compensated at a daily rate in an amount equal to the greater of 80 percent of that wage or $30 per day. If the seamen is paid on a share-of-the-catch basis, he shall be compensated at a daily rate in an amount equal to the greater of $30 per day or the share amount he would have received if he had been employed on the vessel. If the vessel does not operate during some period of the seaman's illness, injury, or disability, the seaman shall be paid $30 for each day the vessel does not operate.

The Committee recognizes that the methods of paying seamen a share of a vessel's profits will vary among different fisheries. The Committee intends that a seaman who normally receives shares when employed on a vessel should receive 80 percent of his normal

share while injured and recuperating. While the amount received is to be prorated on a daily basis, the Committee does not intend that payments be made daily if normal payment practice involves some other method of payment such as weekly, monthly, or end-of-trip payments.

An illness, disability, or injury is temporary if, after cure: (1) the seaman is physically capable of returning to his previous or equivalent employment; (2) does not require further medical care; and (3) has not incurred a substantial loss of sight or hearing, loss of an appendage, or permanent disfigurement. Under this definition, the failure of an ill, injured, or disabled seaman to return to his previous or equivalent employment does not necessarily mean that the illness, injury, or disability is permanent. This would be the case only if the seaman had become permanently incapable as a result of the illness, injury, or disability of meeting the physical requirements of his previous employment in the commercial fishing industry or equivalent employment. "Equivalent employment" refers to a job that is generally comparable in terms of function, responsibility, and compensation to the job held by the seaman at the time the illness, injury, or disability was incurred.

The question of whether a seaman requires "further medical care" will arise at the point where a reasonable assessment of the medical evidence indicates that the seaman has reached the maximum level of recovery. If, at that point, the seaman still requires ongoing medical treatment in connection with the illness, injury, or disability, the injury, illness, or disability shall be considered "nontemporary", or permanent, in nature. If, however, further medical care is not required in order to maintain the health of the individual, then the injury, illness, or disability shall be considered "temporary."

The use of the adjective "substantial" makes it clear that a de minimis loss of sight or hearing is not sufficient to make an injury "nontemporary", or permanent, in nature. A substantial loss of hearing or sight is a loss sufficient to make it impractical for the seaman to carry out normal functions of work or recreation without the assistance of substantial aids, such as optical or electronic devices, seeing eye (or hearing) dogs.

The "loss of an appendage" will ordinarily refer to a permanent loss (or permanent loss of use) of an arm, leg, finger, or toe; it does not, obviously, refer to a loss of a fingernail or toenail or any other part of the body that is capable of natural regeneration.

A "disfigurement" refers to a deep and persistent injury that seriously impairs physical appearance. Thus, scarring might not be considered a "disfigurement" unless it is extensive in nature or readily apparent when the seaman is clothed in normal street or work attire.

In determining the amount of compensation for lost income to which a seamen who has suffered a permanent illness, injury, or disability is entitled, the Committee intends that consideration be given to amounts already paid to the seaman by the vessel owner or employer for maintenance during the period of illness, injury, or disability.

Under the section, the Secretary of Transportation shall annually review the $30 figure for minimum maintenance payments and

is authorized to adjust that figure in accordance with the Consumer Price Index. The Committee intends that, in reviewing this figure, the Secretary shall balance the desirability of a stable legal standard against the need to guarantee equitable levels of maintenance payments to injured seamen. In general, the Committee expects the number to be adjusted, at intervals judged reasonable by the Secretary, to fully reflect meaningful increases in the cost of living.

Section 102 provides that a seaman must bring a civil action against the owner of a fishing industry vessel within two years from the date the cause of action accrued. The Committee recognizes that there may be instances when the date the cause of action accrued is arguable or uncertain. In general, the Committee intends that the date shall be the date of injury, illness, disability, if "nontemporary" or permanent, or date of death. With respect to other injuries, illnesses, or disabilities, the date shall be the date when it becomes clear, according to medical evidence, that the physical problem in question is no longer temporary in nature.

If the vessel owner or employer refuses or fails to make the maintenance and cure payments in the manner prescribed in section 101 of this Act, the cause of action shall date from the day the owner or employer clearly conveys his intention not to make payments to the injured seaman or a representative of the seaman.

It is not the intent of the Committee to reduce a seaman's right or sue or limit the amount one may recover without providing a safer place to work. Thus, title II of H.R. 5013 provides for new safety standards for documented fishing vessels. In addition to existing requirements, all fishing vessels will have to carry visual distress signals. Documented vessels operating beyond the Boundary Line will also have to carry emergency position indicating radio beacons (EPIRB's). lifeboats (if the vessels are at least 36 feet in length and operate in the territorial sea), exposure suits, and radio equipment. The Secretary of the department in which the Coast Guard is operating is also given the authority to prescribe regulations for safety equipment required to minimize the risk of injury to seamen during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment. The Committee intends that the Secretary consult with the Commercial Fishing Industry Vessel Advisory Committee before prescribing regulations under this section.

Due to the large number of vessel capsizing, the Secretary is required to prescribe regulations for the operating stability of newly-built commercial fishing industry vessels or existing vessels that are altered in a manner that affects the operating stability of the vessel. Many fishing vessels operate in hazardous waters where maintaining vessel stability is vital to the survival of the vessel and those on board. It is not uncommon for a vessel to be altered to engage in a new fishery or have significant amounts of equipment or permanent topside weights added that materially alters its seakeeping characteristics so as to make it an unstable platform. The Committee expects that the requirements in section 4502(b) will reduce the number of fishing vessel capsizings and sinkings. The Committee does not intend that the Secretary use the authority under this section to regulate the type or use of fishing gear.

Section 4506 gives the Secretary the authority to exempt a vessel, or a class of vessels, from the requirements of the chapter. It is the intent of the Committee that his exemption authority be used sparingly and only when a compelling case has been made that truly unique circumstances exist for a given vessel or class of vessels. In making these decisions, the Secretary should consider the specialized nature of the vessel operations, the safety record of the vessel, ocean conditions in the area of operation, length of vessel operation, and other matters the Secretary considers appropriate. The Secretary may prescribe special operating conditions as part of an exemption, such as restricting vessel operations to daytime hours and within 2 miles from the shore during periods of good weather.

The Committee recognizes that some vessels, such as seine vessels, carry skiffs or small boats as part of their normal operating procedure. The Committee intends that these boats should be considered as sufficient to meet the lifeboat requirement provided: (1) the boats are readily accessible during an emergency; (2) they are capable of safely holding the entire crew; and (3) they are outfitted with emergency rations, flares, and other gear that would normally be required in a Coast Guard approved lifeboat or liferaft.

Section 4508 requires the Secretary to establish the Commrecial Fishing Industry Vessel Advisory Committee. This Committee has found that advisory committees, such as the Towing Safety Advisory Committee, the Rules of the Road Advisory Council, and the National Boating Safety Advisory Council, have proven to be a valuable resource to the Secretary at a negligible cost to the Federal Government. Because of the new authority being given to the Secretary to regulate safety in the fishing industry, the Committee believes it would be very beneficial for the Secretary to have a balanced group of knowledgeable individuals with whom to consult when developing regulations.

The Committee intends that the Federal Advisory Committee Act (FACA) applies as envisioned in section 4(a) of that Act. That is, the provisions of the FACA or any rule, order, or regulation promulgated under the FACA will apply to this advisory committee except to the extent that this Act specifically provides otherwise. Thus, the report, notice, open public forum, public inspection and copying, cooperation of agency heads, Library of Congress depository, and charter provisions, among others, of the FACA apply. By reporting to the Secretary of Transportation, that agency is responsible for provding administrative support.

This section clearly defines the purpose and scope of interest of the Advisory Committee relating to commercial fishing industry vessel matters. The Advisory Committee is to advise, consult with, report, and make recommendations to the Executive Branch on matters relating to the safe operation of commercial fishing industry vessels including safety, marine insurance, design, and personnel qualification. This, however, is not an exclusive listing, as all matters in this area of concern may be considered. In accordance with Sections 10 and 12 of the FACA, the Secretary of the department to which the Advisory Committee reports will provide for, among other things, public inspection and copying, record keeping,

and support services. This should also include an adequate staff as required by Section 5 of the FACA.

The Advisory Committee will meet at the call of the Secretary but not less than once a year. The Committee intends that the advice and recommendations of the Advisory Committee are to reflect its independent judgment. Further, the Advisory Committee is authorized to make available to Congress the information, advice, and recommendations which it is authorized to give the appropriate official in the Executive Branch. Often advisory committees undertake studies and activities that point out the nature of problems encountered in implementing legislation and the need for certain legislative changes. With this authority, no question will exist whether these efforts can be shared with Congress.

In addition, this section provides for the composition, appointment, and operation of the Advisory Committee. The members of the Committee are to reflect a regional balance and diversity of interests in the commercial fishing industry vessel field to assure that it is fairly balanced. A prerequisite for an appointment is particular expertise, knowledge, and experience regarding the operation of commercial fishing industry vessels. The Advisory Committee is to include 10 members from the commercial fishing industry, including vessel owners and operators, deck hands, and on-board processing line workers, and four members from other groups, such as marine insurance, naval architects and surveyors, gear manufacturers, and education or training personnel (i.e., a person involved in training fishermen in the practical skills of seamanship or safety may be included). Three members are to be selected from the general public to insure the required representational balance. The appointment of a general public member is intended to give the Secretary flexibility in appointing members but specifically requires that, whenever possible, a representative of maritime safety experts and of a national organization such as the National Council of Fishing Vessel Safety and Insurance is to be included. Any general public member must have particular expertise, knowledge, and experience regarding the commercial fishing industry. The provision of general public seats will also allow for the representation of such diverse interests as fishermen's wives' organizations, representatives of the health-care industry, or other interested groups that qualify to be appointed.

Further, it provides that the Secretary has the authority to appoint members of the Advisory Committee after public notice soliciting membership in the Federal Registar and popular newspapers read by those in the industry. It requires a notice of solicitation for membership at least once a year. Often qualified candidates are not aware that a vacancy is available and therefore are denied the opportunity for consideration for membership. This will allow the Coast Guard to solicit candidates for anticipated vacancies and maintain a pool of eligible candidates for unexpected vacancies, eliminating administrative delay.

Although members may serve any number of terms, members should be appointed from representatives of the various interest groups so that the Advisory Committee is not inappropriately influenced by a narrow special interest to further assure compliance with Section 5 of the FACA. On the other hand, no restriction on

the number of terms a particular member can serve is included so that members who are contributing and are willing to serve extended periods are not required to step down prematurely.

It also sets the terms of a member at three years with certain exceptions. The first exception provides for the appointment of a new member for the remainder of a vacated term should a vacancy occur. The other exceptions address the initial appointment of members so that the terms on the board are staggered and coincide with the Government's fiscal year are are found in Section 201(b) of the Act. This will provide for the replacement of one-third of the members of the board each year to provide for continuity. Further, it provides that the Chairman and Vice Chairman will be elected from the members of the board. The Vice Chairman will act as Chairman in the absence or incapacity of the Chairman or in the event of a vacancy in that office. This election procedure will permit the Advisory Committee to determine these key members independent of the appointment process of the Secretary.

This also provides for representatives from the Executive Branch to participate as observers. The Secretary of the department in which the Coast Guard is operating and the Secretary of Commerce are required to appoint a representative, and any other interested agency may designate representatives. These representatives are given the responsibility to report on matters relating to commercial fishing vessels under the jurisdiction of their respective departments. The Secretary's designated representative is directed to act as the Executive Secretary and, among other things, will attend each meeting and make determinations as to conducting meetings in the public interest and in accordance with this Act and the FACA. As Executive Secretary, the Secretary's designated representative is expected to supervise the record keeping and support services and generally provide for the administration of the Advisory Committee.

This section further requires the Secretary to consult, whenever practicable, with the Advisory Committee before taking certain actions affecting the safety of commercial fishing industry vessels. Consultation is not intended to require consideration of issues that could compromise national security. These actions could include proposing legislation or regulations and authorizing or conducting research or studies as safety related issues. The phrase "whenever practicable" is intended to give the Secretary maximum flexibility in administering the safety program so that the Secretary is not restricted by the schedule of the Advisory Committee.

The Secretary is encouraged to consult the Advisory Committee before taking any significant action of a legislative, proposed rulemaking, or operational, but not adjudicatory or law enforcement, nature within the Advisory Committee's scope of interest. In the various determinations as to what constitutes a significant action of a proposed regulatory nature, the Secretary is expected to consider among other things:

(1) the type and nature of individuals, businesses, organizations, or state or local governments affected;

(2) the compliance and reporting requirements likely to be involved;

(3) direct and indirect effects of the proposed regulation, including the effect on competition; and

(4) the relationship of the proposed regulation to those of other programs and agencies.

The Committee expects that the Secretary will establish similar criteria for identification of significant actions of an operational nature, as well as those that fall within the Advisory Committee's scope of iterest. This section is not intended to include actions to implement fishery management plans under the Magnuson Fishery Conservation and Management Act, which is addressed in title III of this Act. The Secretary of Transportation is directed to consider the recommendations of the Advisory Committee in contacts with any agency or with the public.

The consultation requirement placed upon the Secretary is intended to supplement, but not conflict with, the requirements of the Administrative Procedure Act (5 U.S.C. 551 et seq.) as it relates to *ex porte* communications and to agency consultation procedures initiated prior to the issuance of a Notice of Proposed Rulemaking under Section 4 of the Act (5 U.S.C. 553).

By establishing a statutory advisory committee under the FACA, the legislative intent is clearly not to authorize informal *ex parte* contacts with agency officials concerning a proposed agency action after a Notice of Proposed Rulemaking is issued. The courts have interpreted these contacts as violative of due process and fundamental fairness in rulemaking proceedings. On the contrary, the intent is to increase public participation in agency rulemaking by providing an early and meaningful opportunity whenever, practicable to participate in the legislation, research, studies, and regulations, and in significant decisions regarding the working environment aboard commercial fishing industry vessels or of an operational nature directly affecting these vessels. In the regard, the establishment of a statutory advisory committee is intended to supplement the use of advanced Notices of Proposed Rulemaking; the conduct of open conferences and public hearings; and publication of proposed agency actions through media other than the Federal Register, by provision of direct notice of agency actions to known affected parties, other similar actions, or a combination, as appropriate.

The section provides for compensation under section 5332 of title 5, United States Code, and travel or transportation expenses under section 5703 of title 5, United States Code, for members of the Advisory Committee who are not officers, enlisted members, or employees of the United States while acting in an official capacity on the Committee. Further, this entitles these members to per diem under section 5702 of title 5, United States Code. The pay, travel, and per diem provisions are included so that qualified candidates are not needlessly discouraged from participating for geographic or economic reasons. Therefore, those who need and file a claim for these amounts can be paid. These provisions are consistent with the fiscal provisions of other Coast Guard advisory committees. Those members who are not officers, enlisted members, or employees of the United States do not become so merely because they receive payments under this Act. Officers, enlisted members, or employees of the United States shall receive no additional pay because of their service associated with the Advisory Committee. Members

of the reserve components of the armed services are not precluded from membership except when serving in an active status on official orders to the Advisory Committee.

Finally, the section specifically provides for the application of the Federal Advisory Committee Act and the termination of the Advisory Committee at the end of Fiscal Year 1991, which is approximately six years from how. It requires a report to Congress recommending whether the Advisory Committee should be renewed and continued beyond the termination date. This report is due two years prior to any termination date to ensure full and timely consideration by Congress.

Additionally, the bill would require the Secretary, after consulting with the insurance industry, to prescribe regulations to gather a statistical base concerning marine casualties on fishing vessles for the purpose of analyzing vessel risks. Finally, the bill includes language designed to address the need for increased consideration of safety factors in fishery management plans developed by regional councils under the authority of the Magnuson Fishery Conservation and Management Act of 1976.

Legislative Backgound

The Committee has had considerable interest in liability and compensation issues that involve all maritime endeavors, including fishing vessles. During the 98th Congress, the Committee held oversight hearings on the laws that authorize a shipowner to limit his liability. As a result, legislation was introduced in the form of H.R. 5207 by the Honorable Mario Biaggi, Chairman of the Subcommittee on Merchant Marine; due to time constraints and other priority legislation, no further action was taken. Also, as the result of a series of maritime disasters, the issue of limitation of liability was extensively discussed, and a provision was enacted into law that increased the limitation of $60-per-gross-ton required by 46 App. U.S.C. 183(b) to $420. During related hearings on Coast Guard activities, the safety of fishing vessles was considered.

As early as October 1984, informal discussions were held in Boston, Massachusetts with representatives of the fishing industry and the Coast Guard. The presentations at this meeting demonstrated the existence of factors contributing to the special nature and seriousness of the insurance crisis facing commercial fishermen. These included the fact that: (1) the maritime insurance industry is virtually unregulated; (2) U.S. fishing vessels are uninspected and subject to very minimal safety requirements; (3) maritime casualty or liability disputes are settled in Federal court under the principles of admiralty law; (4) an unusual opportunity exists for fraud in both hull and P&I claims; (5) there is no limit on the extent of a vessel owner's liability under a P&I claim; (6) there is no requirement for fishing vessel owners to carry insurance; (7) there are no legal standards governing the content of fishing vessel insurance policies, which had previously provided free medical services and care to seamen (including fishermen), were no longer available.

A number of options were discussed at this meeting. These included: (1) group insurance with self-imposed standards of opera-

ton; (2) vessel safety standards and inspection, both voluntary and mandatory; (3) a workmen's compensation program paralleling the Longshoremen's and Harbor Workers' Compensation Act; and (4) modifications of admiralty law, including limited liability and various insurance regulatory measures.

During the 99th Congress, the Subcommittee on Merchant Marine again directed its attention to the issues of liability, limitation of liability, and marine insurance; the Subcommittee on Coast Guard and Navigation concentrated on fishing vessel safety; while the Subcommittee on Fisheries and Wildlife Conservation and the Environment had an overall interest in the fishing industry. These three Subcommittees have been extensively involved in all issues relating to the commercial fishing vessel industry.

As a result, a number of legislative initiatives were introduced. H.R. 277, introduced by the Honorable Mario Biaggi, concerns itself with the right of a shipowner to limit his liability, is also applicable to commerical fishing vessels, and is an attempt to follow, as closely as possible, the international standard. H.R. 3156, introduced by the Honorable Walter B. Jones of North Carolina, proposes a new system for assessing liability applicable to all vessels, and includes limitation of liability. H.R. 3025, introduced by the Honorable Norman F. Lent, establishes a 17-member Commercial Fishing Industry Vessel Advisory Committee to advise, consult with, report to, and make recommendations to the Secretary of Transportation consistent with the Federal Advisory Committee Act (FACA) (Public Law 92-463). H.R. 3532, introduced by the Honorable Herbert H. Bateman, would required emergency postion indicating radio beacons on uninspected United States fishing, fish processing, and fish tender vessels operating on the high seas. H.R. 4407, introduced by the Honorable Walter B. Jones, and H.R. 4415, introduced by the Honorable Gerry E. Studds, address both a fishing vessel owner-employer's liablity and safety of the fishing vessel industry. H.R. 4407 would also have required Federal fishery management plans to take into account the effect of the plan on fishing vessel and crew safety. H.R. 4465, introduced by the Honorable Mike Lowry, requires commercial fishing vessels to be equipped with certain safety equipment and to meet various operational standards.

During this Congress, various Subcommittees of the Committee on Merchant Marine and Fisheries held numerous hearings (some being held jointly) in Washington, D.C. and in various coastal cities around the country.

On July, 1985, the Committee held a hearing in Seattle, Washington. Witnesses included Captain John F. DeCarteret and Captain Gordon G. Piche of the United States Coast Guard; Mr. David Rodgers, Chief Deputy Commissioner of Insurance for the State of Washington; Mr. John Sabella, a marine consultant; Mr. Bruce Adee of the University of Washington; Captain Harold Huycke, a marine surveyor; Ms. Marilyn Lyttle, representing the American Institute of Marine Underwriters; Mr. Lawrence Senters of the GRE-Albany Atlas Group; Mr. Edward David of the Royal Insurance Company; Mr. Forest Wilton of T.W. Rice and Company; Mr. Donald Marinkovic of the Pacific Marine Insurance Company; Mr. Robert Taylor of the Fishermen's Insurance Service; Mr. Charles

Rockness of the West Coast Marine Fund; Mr. Robert Alverson of the Fishing Vessel Owner's Association; Messrs. Stan Hovik and Arnie Aadland of the North Pacific Fishing Vessels Owners Association; Mr. Al Burch of the Alaska Draggers Association; Mr. Joe Easley of the Otter Trawl Commission; Mr. Barry Collier of the Pacific Seafood Processors Association; and Mr. Edward Evans of the Alaska Factory Trawler Association.

Coast Guard officials testified on the poor safety record of the domestic fishing industry and discussed their initiative to develop voluntary safety standards. Representatives of State governments testified that most State governments do not regulate marine insurance to the extent that automobile or other types of business insurance are regulated and that their ability to respond to the fishing insurance crisis was limited.

Many witnesses discussed the background of the current insurance problem as well as proposed responses to it. Some witnesses noted that a number of insurance companies had come into the insurance market at the end of the 1970's when interest rates were high and profits could be made simply by investing the premiums. Established companies had to reduce their rates to compete with these new entrants. Several of these established companies could not compete when prior claims were made, thereby leaving the vessel owner without adequate coverage. A portion of the recent increase in rates is due to the efforts of insurance companies that are still operating in the market to recoup losses that they suffered when their rates were forced down. Testimony also noted that the poor safety record of the fishing vessel industry contributed to high premium rates and recommended the establishment of a rating bureau to judge the relative safety of vessels.

The insurance industry (represented by brokers and fund managers) pointed out that some of the companies were taking advantage of the current situation and were perhaps raising rates more than necessary. It was generally agreed that increases were required to try to cover a portion of the losses realized in the late 1970's and early 1980's. Some expressed the view that the current cost of insurance was not too high and was, in fact, affordable. It was stated that the problems the fishing industry was having with regard to the availability of insurance would be best resolved when overall macroeconomic conditions improved.

There was testimony that the open-ended liability provisions of current law, as exploited by increasingly aggressive plaintiffs' attorneys, was also a fundamental part of the problem with regard to liability insurance. Some examples of large awards to fishermen were noted, and there were statements that the current legal situation had to be changed before awards could be limited. Testimony was also received on the key ingredients for the successful operation of group insurance pools. The pools must carefully screen all members to insure that adequate safety standards and practices are employed and must have members willing to take the time to ensure that these standards are being upheld by all members of the pool.

The fishing vessel owners spoke both about the high cost and the relative unavailability of insurance coverage. They urged that changes be made in the law that would limit their liability while

insuring that injured seamen receive fair and adequate compensation for legitimate injuries. They indicated that vessels were currently operating without hull insurance because it was too expensive, and that many other fishing vessels were not operating since the owners could not buy adequate insurance.

On October 11, 1985, the Committee held a field hearing in New Bedford, Massachusetts. Witnesses included the Honorable Brian Lawler, Mayor of the City of New Bedford; the Honorable William MacLean, a State Senator from the Commonwealth of Massachusetts; the Honorable Joseph McIntyre, a State Representative from the Commonwealth of Massachusetts; Captain George F. Ireland and Captain Gordon G. Piche of the United States Coast Guard; Mr. Timonthy Gailey, Assistant Secretary of the Massachusetts Office of Consumer Affairs; Mr. William Palombo of the Atlantic Offshore Fisheries Association; Mr. Frank Mirrachi of the Massachusetts Inshore Draggerman's Association; Mr. James Costakes of the New Bedford Seafood Producers Association; Mr. Jim McCauley of the Point Judith Fishermen's Association; Ms. Pat Schroeder of the Maine Fisheries Cooperative Association; Mr. Anthony Verga of the Gloucester Fisheries Commission; Mr. Sam Parisi of Parisi's Marine; and Mr. Leif Jacobsen of Neptune Mutual.

Testimony highlighted a belief that a State could do more to encourage the establishment of cooperative pools and insurance groups among fishermen. The Coast Guard reiterated the concern expressed at the Seattle hearing about the safety record of the commercial fishing vessel fleet and the agency's continued belief that a voluntary program was the best way to approach the problem.

Others noted that marine insurance is little regulated by the States, that there was no legal or constitutional bar to more direct State involvement, and that it would require legislation on the State level. Problems with the current legal regimen was noted with recommended changes in Federal law that would help increase the predictability of the level of claims. They noted that vessel owner pools of self-insurance group did not offer a panacea for fishermen, although the developemnt of these groups could be helpful.

Several vessel owners and representatives of fisheries associations presented their position with regard to this crisis, and they echoed the views expressed by many at this and earlier hearings. They stated that they wanted to make sure that those with legitimate injuries received compensation. They also wanted to see a change in the current system that they allege is encouraging false claims and spurious lawsuits. Others expressed disappointment over the failure of the insurance industry to work more closely with boat owners and to offer incentives for safe practices. There were indications that fishermen should work with government agencies, insurance companies, safety experts, and among themselves to improve safety conditions on fishing vessels and to improve the insurance situation. Testimony was also received on the operation of a nonprofit mutual hull and P&I insurance club for 147 boats.

The last of three field hearings specifically directed at the commercial fishing vessel industry was held in San Diego, California

on October 15, 1985. Witnesses included the Honorable Anthony Calio, Administrator of the National Oceanic and Atmospheric Administration (NOAA); Captain Gordon G. Piche of the United States Coast Guard; and Professor Dennis Nixon of the University of Rhode Island. Mr. Steve Edney of the AFL–CIO, Mr. John Royal of Local 33 of the International Longshoremen's and Warehousemen's Union, and Mr. Mike Bono of the Seafarers International Union offered the views of organized labor. Representing insurance brokers were Mr. Robert Larkin of Lawron-Byrne and Bruner Insurance Company, Mr. Richard G. Heimstra of Cosimo-Cutri Company, Mr. Frank Canetti of Canetti Insurance, and Mr. Robert Lawrence of Ocean Air Insurance Brokers. Mr. Robert Dyer of Dyer, Dyer, Brewer & Walton; Mr. Robert Bruce Arnold of Arnold & Arnold; Mr. Lawrence Lewin of Manns, Narwitz, Lewis & Klein; and Mr. Lawrence Kaye of Lillick, McHose & Charles testified concerning their experiences in defending vessel owners and insurance companies in court. Several tunaboat owners who testified as to their current problems in getting insurance included Mr. August Felando of the American Tunaboat Association, Mr. Joe Medina, Mr. Julius Zolezzi, and Mr. EDmund Gann. Also testifying were Mr. Anthony Trutanich of Pan-Pacific Fisheries; Mr. Manley Sarnowski of Van Camp Seafood Company; Mr. John Vilicich of Mosich-Vilicich Corporation; Mr. Frank Iacono of the Fishermen's Cooperative of San Pedro, California; and Mr. Bill Perkins of the Western Fishboat Owners Association.

NOAA testified that its role is perceived as a catalyst in bringing interested parties together to help resolve the current crisis. It was pointed out that specific grants provided under the Saltonstall-Kennedy Program are being used to develop solutions to both the safety and the insurance problems. It was also pointed out that the Administration would not support the direct use of Federal funds in any proposed solution.

Testimony was offered describing the results of a study NOAA had done under a Saltonstall-Kennedy grant to investigate alternative compensation schemes for commercial fishermen. As a result of the research, the following changes to the current system were recommended. First, maintenance and cure, the payment an injured fisherman receives to cover living expenses during his recovery, should be increased to $30 per day. Second, a disability income insurance program should be established for fishermen. Finally, it was suggested that the Federal laws regulating the right of an injured party to go to court be modified so that individuals with temporary disabilities lasting less than one year would be barred from suing for compensation beyond the disability insurance and the maintenance and cure provisions. Other witnesses felt the suggestions were a good starting point for reevaluating the current system.

Representatives of labor organizations testified in support of changes to the law that would result in quick and efficient remedies to injured seamen but would not unduly reward lawyers or encourage frivolous suits. Labor said that they would be willing to accept some limitations on the rights of seamen if the changes would result in a more equitable system that protected the legitimate needs of injured seamen.

There was widespread support for amending the Jones Act to reduce the open-ended nature of the vessel owner's liability. Other specific recommendations for change included a suggestion that the current three-year statute of limitations on filing suits be reduced to one year.

The tunaboat operators spoke, as did their counterparts elsewhere in the country, of their desire to see legitimate claims compensated. However, there was a great deal of concern expressed about the filing of completely false claims, from which they could not defend themselves. With regard to vessel safety, it was pointed out that most of the tuna vessels have safety standards that exceed those in the current Coast Guard recommendations and yet they still cannot obtain affordable insurance. The representative of the Western Fishboat Owners Association testified in support of the establishment of the Commercial Fishing Industry Vessel Safety Advisory Committee.

On October 17, 1985, November 7, 1985, and again on April 16, 1986, the Subcommittee on Merchant Marine held hearings in Washington, D.C., directed solely at the issue of limitation of liability and its impact on all vessels of the United States—including fishing vessels. Specifically, the contents of two legislative initiatives (H.R. 277 and chapter 311 of H.R. 3156) were considered.

At the October 17, 1985 hearing, Robert L. Willmore, Deputy Assistant Attorney General, Civil Division (Department of Justice) appeared to present a brief statement as to why the Administration would not be appearing on that date. (The Department of the Navy, Department of Justice, and the Department of Transportation had been invited to testify.) Appearing on behalf of the Maritime Law Association of the United States were Graydon S. Staring, Lillick, McHose & Charles; Gerard T. Gelpi, Gelpi, Sullivan, Carroll & LaBorde; Richard W. Palmer, Palmer, Biezup and Henderson; Kenneth H. Volk, Burlingham, Underwood & Lord; Donald A. Waesche, Waesche, Scheinbaum & O'Regan; and David R. Owen, Semmes, Bowen & Semmes. Also testifying was an Industry Panel comprised of Geoffrey V. Parker, United States Lines, Inc., representing the Council of American-Flag Ship Operators (CASO); James F. Spahn, OMI Corporation, appearing on behalf of the American Institute of Merchant Shipping (AIMS); Thomas B. Crowley, Crowley Maritime Corporation; and Thomas O. Murphy, Lake Carrier's Association. Talmage Simpkins of the AFL–CIO Maritime Committee was accompanied by George J. Cappiello, Jr. of Phillips & Cappiello, General Counsel of the National Maritime Union.

At the November 7, 1985 hearing, a small vessel operator panel was heard, with the following testifying: Frank T. Stegbauer, Southern Towing Company, representing the American Waterways Operators (AWO); Thomas E. Hogan, Wheless Drilling Company, representing the International Association of Drilling Contractors (IADC); Stephen A. Van Dyck, Sonat Marine Inc.; Francis I. Spagnoletti of Vinson and Elkins on behalf of Halliburton Company, Brown & Root, and Highlands Insurance Company; and Captain Philip J. Danahy, USCG (Ret.) of the National Association of Passenger Vessel Owners. This panel was followed by an insurance panel composed of: Thomas J. McGowan, Shipowners Claims Bureau, Inc., representing the American Steamship Owners

Mutual Protection and Indemnity Association, Inc., accompanied by Richard H. Brown, Jr. of Kirlin, Campbell & Keating; Thomas O. Clark, Commercial Union Insurance Company, representing the American Institute of Marine Underwriters, accompanied by Douglas A. Jacobsen of Bigham, Englar, Jones & Houston; and MacDonald Deming of Haight, Gardner, Poor & Haven, representing The Association of the Bar of the City of New York.

At the April 16, 1986 hearing, the Subcommittee again heard from Robert L. Willmore, Deputy Assistant Attorney General, Civil Division (Department of Justice). The International Group of P&I Clubs was represented by Terence Coghlin from London, England. He was accompanied by D.J.L. ("Lloyd") Watkins, Secretary and Executive Officer; Iain Webb-Wilson, Thomas R. Miller & Son Limited, London; and Gordon W. Paulsen of Healy and Baillie, New York City. Members of the American Trial Lawyers Association who testified were: Harvey J. Lewis, Kierr, Gainsburgh, Benjamin, Fallon, and Lewis, of the Louisiana Trial Lawyers Association; Ross Diamond, III, Diamond, Leon, and Barter, of the Alabama Trial Lawyers Association; Richard M. Schechter, Schechter, Eisenman, and Solar, of the Texas Trial Lawyers Association; Edward J. White, Orlando and White, Massachusetts Trial Lawyers Association; and Roger Vaughan of Wagner, Cunningham, Vaughan & McLaughlin, representing the Florida Trial Lawyers Association.

There was general agreement among the witnesses that the laws regarding liability for loss of life or bodily injury are out of date and should be amended to reflect present conditions. There was also a feeling that all types of vessels, particularly commercial vessels, should be treated the same. Some stated that a wait-and-see policy should be adopted. They felt that the recent change from a $60- to a $420-per-gross-ton limitation of liability, as required by 46 App. U.S.C. 183(b), might be adequate without further legislation. Many others said that legislation should be enacted that closely parallels the present Convention of Liability for Maritime Claims, 1976. They felt that this would provide the most effective and equitable means of protecting the rights of victims and vessel owners.

On April 17, 1986 in Washington, D.C., a joint hearing was held by the Subcommittees on Merchant Marine, Coast Guard and Navigation, and Fish and Wildlife Conservation and the Environment, directed solely to the fishing vessel industry. The hearing considered all legislative initiatives involving liability, limitation of liability, and vessel safety before the Committee.

Witnesses at the hearing included Professor Dennis Nixon of the University of Rhode Island; Rear Admiral John W. Kime of the United States Coast Guard; Mr. James Douglas, Acting Deputy Administrator for Fisheries, NOAA; and Mr. Luigi Colucciello of the National Transportation Safety Board. Mrs. Robert Barry, Mrs. Rosemary Hofer, and Mrs. Mary Hoyt, who had lost their sons in accidents on commercial fishing vessels, testified as did Mr. Peter Egan, representing the American Institute of Marine Underwriters. There were several witnesses representing the commercial fishing industry, including Mr. James Costakes of the New Bedford Seafood Producers Association; Mr. August Felando of the American Turnaboat Association; Mr. William Palombo of the Atlantic Offshore Fisheries Association; Mr. Eldon Greenberg, representing

the Southeastern Fisheries Association; Mr. Ralph Rayburn of the Texas Shrimp Association; Mr. I. Luie Fass of the East Coast Fisheries Association; Mr. Dave Burney of the U.S. Tuna Foundation; and Mr. C. Deming Cowles of the United Fishermen of Alaska. Also testifying were Mr. Frank Pecquex of the Seafarers International Union; Mr. Barry Gristwood of Sunderland Marine Insurance Company; Mr. Kenneth Sheehan of the American Bureau of Shipping; Ms. Bonnie McCay of Rutgers University; Mr. Ross Diamond, a trial attorney from Mobile, Alabama; and Mr. Edward White, a trial attorney from Gloucester, Massachusetts.

The Subcommittees were provided with a review of the history of the insurance problem with regard to the commercial fishing industry and an appraisal of the best legislative alternative. They also received the results of a study completed under a grant provided by the Saltonstall-Kennedy Program. This study, based on an examination of 100 cases for each of the past five years, indicated that seriously injured fishermen were not being overcompensated under the current system. Rather, it was found that the major problems in the current system arose from large awards to individuals suffering temporary disabilities of less than one year in duration. Testimony concluded that the preferred alternative—which would reduce the amount of claims by approximately 35 percent and still provide fair and equitable compensation to injured seamen—was a combination of the provisions of H.R. 4407 and H.R. 4415 with the limitations from H.R. 4415 combined with an overall cap on liability of approximately $600,000 per incident.

The Administration witnesses supported voluntary safety standards for commercial fishing vessels but opposed establishing a mandatory regulatory scheme. They argued that a voluntary program would be as effective as a mandatory one, while being much less expensive for both the fishermen and the government. The NOAA witness stated that the Administration would support dealing with the insurance problems facing the fishing industry in separate legislation, without addressing the insurance crisis in general. The NOAA witness also testified that there was a need to address the safety aspect of fishery management plans but that the approach taken in H.R. 4407 might be too stringent, thereby making fishery management plans more subject to disapproval and increasing the likelihood of actions against the Federal government.

The National Transportation Safety Board did not believe that a voluntary safety program would work in the commercial fishing industry. They noted that past experience with the industry showed that voluntary standards or guidelines had not a significant effect on safety. In particular, they recommended that a licensing program, similar to that required for operators of uninspected towing vessels, should be imposed on operators of commercial fishing vessels.

A panel consisting of three mothers, all of whom had lost sons in commercial fishing vessel accidents, testified that the vessels on which their sons were working had failed to carry certain survival equipment that might have saved their lives. They all called for increasing mandatory requirements for safety and survival equipment on fishing vessels, to include at least the list of equipment set forth in H.R. 4415. There was also testimony on the need to assure

that fishing vessels operating on the high seas are able to signal for help and be located quickly through the use of EPIRB's and handheld distress flares. Devices such as these that meet Federal standards are readily available for purchase. Testimony also indicated the need for providing a forum for reviewing issues relating to fishing vessel safety where representatives of all industry sectors and the general public can meet to address and develop a consensus for solving fishing vessel safety issues, including navigation safety, safety equipment and procedures, marine insurance, vessel design, and personnel qualifications.

The American Institute of Marine Underwriters noted the difficulty in getting reliable statistics on the fishing vessel insurance situation because of the absence of any industry-wide data specific to this problem. The lack of specificity notwithstanding, they testified that, for the five-year period ending in 1984, insurance underwriters paid out $1.56 in losses and expenses for every $1.00 received in premiums from the fishing industry. They stated that many underwriters have withdrawn from the fishing vessel market because they cannot adequately predict future losses and are, therefore, unwilling to accept the vessel owner's risks at any price. They expressed support for the safety standards included in the various bills, especially with regard to stability problems posed by vessels that are configured to allow them to enter into new fisheries. A firm engaged in marine underwriting in the United Kingdom testified that, as a result of the current situation in the United States, their firm now limits its North American operations to Canada. This firm later submitted information that it can underwrite disability insurance for seamen on fishing vessels at reasonable rates (presumably if the market were more stable).

The Seafarers International Union testified in support of a bill that treated the insurance problems facing the commercial fishing industry separately from other sectors of the merchant marine industry. They emphasized the need for improved safety on fishing vessels but expressed concern about supporting changes in the laws affecting the rights of injured fishermen in the absence of assurances from the insurance industry that these changes would, in fact, increase the availability of affordable insurance. The United Fisherman of Alaska testified in support of the establishment of the Commercial Fishing Industry Vessel Safety Advisory Committee.

Several representatives of the fishing industry supported legislation that would limit a vessel owner's liability while ensuring that injured seamen receive prompt and adequate compensation. Some expressed support for the liability provisions of H.R. 4415, while suggesting that the required maintenance payment be set at $30 per day. Some stated that H.R. 4415 should be amended to allow injured seamen to be eligible for some nonpecuniary payments and that a total cap on liability of between $350,000 and $500,000 per incident—not including medical costs—would be appropriate.

With regard to the safety provisions of the various bills, most of the fishing industry representatives agreed that the diverse nature of the fishing industry would make it very difficult for the Coast Guard to develop a nationwide regulatory scheme that went beyond the equipment listed in H.R. 4415 and HR. 4465. They said

that the Coast Guard should work with fishing associations around the country to develop voluntary standards that would meet the particular needs of the various fisheries.

The Committee also heard from plantiffs' trial attorneys, who strongly opposed the provisions of H.R. 4415 and H.R. 4407 that would limit a vessel owner's liability. They felt that the proposed changes in law would not help the insurance situation and would severely hurt injured fishermen. They suggested, instead, the imposition of strong mandatory safety standards.

The American Bureau of Shipping (ABS) recommended that the Committee extend the liability protections afforded in the bills to classification societies such as ABS that might do survey or inspection work on fishing vessels. Others, including Ms. Bonnie McCay, a maritime anthropologist from Rutgers University, stated that there is a need for better data on the state of the Nation's commercial fishing fleet and the impact of the insurance crisis upon it.

On June 11, 1986, as a result of the prior hearings, a clean bill (H.R. 5013, the Commercial Fishing Vessel Liability and Safety Act of 1986) was introduced by Chairman Jones of the Committee on Merchant Marine and Fisheries, with 16 cosponsors. This bill would establish a new system of liability for damages to fishermen and would require additional safety regulations for the commercial fishing vessel industry. To expedite consideration of this legislation, the Subcommittee Chairmen of jurisdiction agreed to take the bill directly to the Fully Committee.

On July 23, 1986, the Committee on Merchant Marine and Fisheries marked up H.R. 5013. The Committee adopted an amendment in the nature of a substitute, which included a number of technical and clarifying amendments. An amendment was adopt that would prevent a person from limiting his liability of he knowingly violates a safety regulation and that violation is the primary cause of the illness, disability, injury, or death. An amendment modifying the penalty for violating regulatory requirements for the reporting of data by insurance companies was also adopted. As amendment requiring the reporting of very detailed vessel casualty statistical and related insurance data was defeated.

The Committee then, by voice vote, ordered H.R. 5013, as amended, to be favorably reported to the House for further consideration.

Section-by-Section Analysis

COMMERCIAL FISHING VESSEL LIABILITY AND SAFETY ACT OF 1986

TITLE I

Liability for Personal Injury of Fishing, Fish Processing, and Fish Tender Vessels

Section 101, Limitations on Liability for Personal Injuries to Seamen on Commercial Fishing Industry Vessels.—This section amends the Act of March 4, 1915 (the Jones Act) by adding a new section 21.

Section 21(a) defines "fishing vessel", "fish processing vessel", and "fish tender vessel" to mean the same as those terms are defined in section 2101 of title 46, United States Code. This subsection

also defines a temporary illness, disability, or injury to be one which, after cure, the seaman can return to the seaman's previous (or equivalent) employment, does not require further medical care with respect to the illness, disability, or injury, and does not result in a substantial loss of sight or hearing, the loss of an appendage, or permanent disfigurement.

Section 21(b) prohibits a civil action from being brought under either the Jones Act or the General Maritime Law by a seaman against the seaman's employer, vessel owner, or the vessel if the employer or owner provides cure and maintenance at a daily rate in an amount equal to the greater of 80 percent of the individual's wage or share, or $30. (See Discussion above.)

Section 21(c) allows the Secretary of Transportation to periodically increase or decrease that figure, but not more than the percentage of increase or decrease in the Consumer Price Index for the period considered.

Section 21(d) limits the total liability (except for hospital and medical expenses) of a vessel owner, seaman's employer, and the vessel under the Jones Act, the Death on the High Seas Act, and the General Maritime Law to $500,000 per person, per incident. This limit also applies to an action brought against the employer, owner, or vessel for contribution or indemnification. However, this limitation does not apply if the person seeking to limit liability: (a) proximately causes the illness, disability, injury, or death by that person's gross negligence or willful misconduct; (b) knowingly violates a safety regulation, which primarily caused the illness, disability, injury, or death; or (c) does not provide maintenance and cure under this Act and the General Maritime Law. The Committee notes that a knowing violation of a safety regulation is the same as gross negligence or willful misconduct, but was added for emphasis and clarity on that point.

Section 102, Statute of Limitations.—This section amends Public Law 96-382 (46 App. U.S.C. 763a) to decrease the statute of limitations for civil actions against the employer or owner of a fishing, fish processing, or fish tender vessel under the Jones Act, Death on the High Seas Act, or General Maritime Law to 2 years from the date the cause of action accrued.

TITLE II

Commercial Fishing Industry Vessel Safety

Section 201, Fishing Industry Vessel Safety Requirements.—This section amends chapter 45 of title 46, United States Code by adding new minimum standards for fishing, fish processing, and fish tender vessels. Subsection (a) creates the new chapter with the following new sections in title 46:

Section 4501, Application.—This section defines the application of the chapter which applies to all fishing, fish processing, and fish tender vessels. However, it further states that it does not supercede or replace the requirements under chapter 37 concerning the carriage of bulk dangerous cargoes on vessels.

Section 4502, Safety Standards.—This section defines the minimum safety standards for these vessels.

Subsection (a) carries over the standards from chapter 41, Uninspected Vessels, and adds a requirement for visual distress signals.

Subsection (b) requires vessels operating beyond the Boundary Line to have at least one emergency position indicating radio beacon, lifeboats, exposure suits, radio equipment, and other equipment when the Secretary determines that the equipment can eliminate or mitigate a risk of serious injury.

Subsection (c) restates the existing requirements for uninspected fish procesing vessels entering into service after December 31, 1987. The Committee expects that the regulations under this section will take into account requirements under subsections (a) and (b) of this section and be in addition to, not duplicative of, those requirements under this section See page H7230, Congressional Record of June 27, 1984, for the legislative history of existing requirements.

Subsection (d) requires the Secretary to prescribe regulations for the operating stability of fishing, fish processing, and fish tender vessels that are built after December 31, 1987 or that are substantially altered after that date in a manner that affects the vessel's operating stability.

Subsection (e) requires the Secretary to consider the specialized nature and economics of the type of vessel operations and the character, design, and construction of the type of vessel when prescribing regulations under this chapter. It also requires the Secretary to consult with representatives of the private sector having experience in the operation of fishing, fish processing, and fish tender vessels to ensure the practicability of those regulations.

Section 4503, Equivalency.—This section restates the existing equivalency standards in the current section 4503. See page H7230, Congressional Record of June 27, 1984, for the legislative history of existing requirements.

Section 4504, Prohibited Acts.—This section prohibits a person from operating a vessel in violation of chapter 45 or a regulation prescribed under that chapter.

Section 4505, Termination of Unsafe operations.—This section gives the Coast Guard the authority to direct a vessel back to port if the operation of that vessel creates an especially hazardous condition.

Section 4506, Exemptions.—

Subsection (a) gives the Secretary the authority to exempt a vessel, or class of vessels, from any part of the requirements of the chapter if the Secretary finds that good cause exists for granting the exemption and that safety will not be adversely affected. However, the Secretary may restrict the vessel's operation by prescribing special operating conditions as a condition for granting the exemption.

Subsection (b) exempts vessels that are less than 36 feet overall in length from the requirements of having lifeboats or life rafts.

Section 4507, Penalties.—This section contains the penalties for violating the requirements of the chapter consistent with penalties throughout title 46.

Section 4508, Commercial Fishing Industry Vessel Advisory Committee.—This section establishes the Commercial Fishing Industry Vessel Advisory Committee to advise, consult with, report to, and make recommendations to the Secretary of Transportation consist-

ent with the Federal Advisory Committee Act (5 App. U.S.C.). (See also Discussion above.)

Subsection (b) provides for special one-time adjustments to the terms of the members of the Advisory Committee upon initial appointment.

Section 202, Accident Data Statistics.—This section establishes a new accident data compilation system for insurance companies by adding a new section 6104 to title 46 that requires the Secretary to compile statistics concerning marine casualties from data compiled by insurers of fishing, fish processing, and fish tender vessels in order to gather a statistical base for analyzing vessel risks. Section 6103 to title 46 is amended by adding a penalty provision for any person that violates the reporting requirements of section 6104 of this title or a regulation prescribed under that section.

TITLE III

Fishery Management Safety

Section 301 amends section 303(a)(2) of the Magnuson Fishery Conservation and Management Act to require that, in the development of a fishery management plan under that Act, a regional fishery management council shall include a description of the likely effects of the plan on the safety of persons and vessels engaged in the particular fishery.

Compliance with Clause 7, Rule XIII

In accordance with paragraph (d) of this clause, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been prepared and included in the report.

Inflationary Impact Statement

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee has assessed the potential for inflationary impact of the bill and has concluded that H.R. 5013 will have no significant impact on inflation in the general economy.

It is anticipated, however, that the bill will ease pressures currently generating dramatic increases in the cost of insurance to the commercial fishing industry. The legislation is designed to create a more stable and predictable system for compensating injured fishermen, and to improve the safety record of fishing vessels. This should result in an increased willingness by insurance companies to insure commercial fishing activities by insurance companies to insure commercial fishing activities at an affordable cost. It should also stimulate the creation of insurance pools within the fishing industry itself, thereby increasing competition and reducing the cost of insurance.

The legislation should also restrain inflation by reducing the amount and cost of litigation associated with injuries to fishermen, and by reducing the number of fishing casualties requiring health-related expenditures.

Much of the fishing vessel safety equipment required by the legislation is already aboard offshore fishing vessels and would not

have to be newly purchased. According to information provided to the Committee, the total cost of the equipment required for a new four-person trawler would be little more than $8,000—or roughly two percent of the total value of the vessel. It is not anticipated that the safety equipment required by the bill will result in a significant increase in the cost of commercial fishing activities. Instead, it is expected that the resulting restraint in insurance costs will more than compensate for the cost of any new equipment purchased as a result of the legislation.

Compliance with Clause 2(1)(3) of Rule XI

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives:

(A) The legislation discussed in this report reflect the testimony obtained by the Committee during three regional oversight hearings conducted in 1985, two legislative hearings in 1985, and two legislative hearings in 1986.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation since it does not provide new budget authority or new or increased tax expenditures.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at, pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 5013 pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

Congressional Budget Office,
U.S. Congress,
Washington, DC, July 25, 1986.

Hon. Walter B. Jones,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 5013, the Commercial Fishing Vessel Liability and Safety Act of 1986, as ordered reported by the Committee on Merchant Marine and Fisheries on July 23, 1986.

H.R. 5013 would limit the liability of fishing vessel owners and employers of seamen for injuries suffered during the course of a seaman's employment. The bill directs the Secretary of Transportation to promulgate safety standards for fishing vessels and to establish a Commercial Fishing Industry Vessel Advisory Committee to advise the Secretary on actions affecting fishing, fish processing, or fish tender vessels. In addition, the bill requires the Secretary to compile statistics concerning the marine casualties. Finally, H.R. 5013 would amend the Magnuson Fishery Conservation Act to require fishery management councils, in preparing fishery management plans, to assess the likely effect of conservation and management measures on the safety of persons and vessels engaged in a fishery.

Based on information from the Coast Guard and the Office of the Secretary, CBO estimates that the enactment of this bill would result in an annual cost to the federal government of approximately $1 million. This estimate includes the costs of developing and enforcing vessel safety requirements, reviewing liability limits, and operating the Commercial Fishing Industry Vessel Advisory Committee. In addition, the requirement to compile vessel casualty statistics would result in a one-time cost of approximately $450,000 in fiscal year 1987 for data processing facilities.

Enactment of this bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we would be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH,
(For Rudolph G. Penner, Director).

DEPARTMENTAL REPORTS

Although no official Departmental reports were received, representatives from the Department of Transportation, Department of Justice, and Department of Commerce testified during the Subcommittees' hearings. That testimony is described in the Legislative Background section of this report.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 14, 1915, AS AMENDED

38 STAT. 1164–1185

41 STAT. 1007

96 STAT. 1955

46 APP. U.S.C. 688

§ 20. Recovery for injury to or death of seaman

(a) Application of railway employee statutes; jurisdiction

* * * * * * *

(b) Limitation for certain aliens; applicability in lieu of other remedy

(1) * * *

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

SEC. 21. (a) In this section—

(1) "fishing vessel", "fish processing vessel", and "fish tender vessel" have the same meanings given those terms in section 2101 of title 46, United States Code.

(2) an illness, disability, or injury shall be considered temporary if, after cure, the seaman—

(A) can return to the seaman's previous (or equivalent) employment;

(B) does not require further medical care with respect to the illness, disability, or injury; and

(C) does not have a substantial loss of sight or hearing, does not have a loss of an appendage, and does not have permanent disfigurement.

(b) A civil action (including an action for contribution or indemnification) may not be brought under any law of the United States against the employer of a seaman, a vessel owner, or a vessel for loss suffered as the result of a temporary illness, disability, or injury suffered by a seaman during the course of the seaman's employment to a fishing, fish processing, and fish tender vessel if the employer or vessel owner provides—

(1) cure for the ill, disabled, or injured seaman; and

(2) maintenance during the period of illness, disability, or injury in an amount equal to—

(A) for each day that vessel is on a voyage, the greater of—

(i) 80 percent of the wage or share the seaman would have received for that day if the seaman had been employed on the vessel for that voyage; or

(ii) $30; and

(B) for each day that vessel is not on a voyage, $30.

(c) The Secretary of Transportation shall annually review the dollar figure in subparagraphs (A)(ii) and (B) of subsection (b)(2). The Secretary may periodically increase or decrease that figure, but not by more than the percentage increase or decrease in the Consumer Price Index for the period considered.

(d)(1) Except as provided in paragraphs (2) and (3), the liability of the owner of a fishing, fish processing, or fish tender vessel, and the employer of a seaman on any of those vessels, under a law of the United States for a seaman's illness, disability, or injury (other than a temporary illness, disability, or injury) or death arising out of an incident during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel is limited to $500,000. The limitation provided in this paragraph applies to an action for contribution or indemnification against the owner or employer.

(2) The limitation under paragraph (1) does not apply with respect to hospital and medical expenses.

(3) Paragraph (1) does not apply to an owner or employer if—

(A) the illness, disability, injury, or death was casued by the gross negligence or willful misconduct of the owner or employer, as the case may be;

(B) the illness, disability, injury, or death was primarily caused by a violation of chapter 45 of title 46, United States Code, that was within the knowledge of the owner or employer, as the case may be; or

(C) the owner or employer, as the case may be, does not provide cure and maintenance as described in paragraphs (1) and (2) of subsection (b).

PUBLIC LAW 96-382

94 STAT. 1525

46 APP. U.S.C. 763a

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That,] *That (a)* unless otherwise specified by law, a suit for recovery of damages for personal injury or death, or both, arising out of a maritime tort, shall not be maintained unless commenced within three years from the date the cause of action accrued.

(b) A civil action against the employer of a seaman or the owner of a fishing, fish processing, or fish tender vessel for recovery of damages for illness, injury, disability, or death suffered during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel may not be maintained unless started within 2 years from the date the cause of action accrued.

* * * * * * *

(CHAPTER 45 OF TITLE 46, UNITED STATES CODE)

[CHAPTER 45—FISH PROCESSING VESSELS

[Sec.
4501. Application.
4502. Regulations.
4503. Equivalency.
4504. Penalties.

[§ 4501. Application

[(a) This chapter applies to an uninspected fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products—

[(1) on the navigable waters of the United States; or

[(2) owned in the United States and operating on the high seas.

[(b) This chapter does not apply to the carriage of liquid bulk dangerous cargoes regulated under chapter 37 of this title.

[§ 4502. Regulations

[(a) For each vessel to which this chapter applies, the Secretary shall prescribe regulations for—

[(1) navigation equipment, including radars, fathometers, compasses, radar reflectors, lights, sound-producing devices, nautical charts, and anchors;

[(2) life saving equipment, including life preservers, exposure suits, lifeboats or life rafts, emergency position indicating radio beacons, signaling devices, bilge pumps, bilge alarms, life- and grab-rails, and medicine chests;

[(3) fire protection and firefighting equipment, including fire alarms, portable and semi-portable fire extinguishing equipment, and flame arrestors;

[(4) the use and installation of insulation material;

[(5) storage methods for flammable or combustible material; and

[(6) fuel, ventilation, and electrical systems.

[(b) In prescribing regulations under subsection (a) of this section, the Secretary shall—

[(1) consider the specialized nature and economics of fish processing vessel operations and the character, design, and construction of fish processing vessels;

[(2) consult with representatives of the private sector having experience in the operation of these vessels to ensure the practicability of these regulations; and

[(3) not compel alteration of a vessel to which this chapter applies or item of equipment on that vessel, or of the construction of a vessel or manufacture of a particular item of equipment which is begun before the effective date of the regulation.

[§ 4503. Equivalency

[A vessel to which this chapter applies is deemed to comply with the requirements of this chapter if it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention of Safety of Life at Sea to which the United States Government is currently a party and shall not be required by the Secretary to alter or replace the equipment or structural requirements required under this chapter.

[§ 4504. Penalties

[If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than $1,000. The vessel also is liable in rem for the penalty.]

CHAPTER 45—COMMERCIAL FISHING INDUSTRY VESSEL

Sec.
4501. Application.
4502. Safety standards.
4503. Equivalency.
4504. Prohibited acts.
4505. Termination of unsafe operations.
4506. Exemptions.
4507. Penalties.
4508. Commercial Fishing Industry Vessel Advisory Committee.

§ 4501. Application

(a) This chapter applies to a fishing, fish processing, and fish tender vessel.

(b) This chapter does not apply to the carriage of bulk dangerous cargoes regulated under chapter 37 of this title.

§ 4502. Safety standards

(a) A fishing, fish processing, and fish tender vessel must—

(1) if propelled by machinery, be provided with fire extinguishers, capable of promptly and effectively extinguishing a combustible or flammable liquid fuel, that shall be kept in a condition for immediate and effective use and so placed as to be readily accessible;

(2) carry at least one readily accessible life preserver or other lifesaving device for each individual on board;

(3) have the carburetors of each engine on board the vessel (except an outboard motor) using gasoline as a fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device;

(4) if using a volatile liquid as fuel, be provided with the means for properly and efficiently ventilating enclosed spaces, including engine and fuel tank compartments, so as to remove any explosive or flammable gases; and

(5) be provided with visual distress signals.

(b) In addition to the requirements of subsection (a) of this section, for a documented fishing, fish processing, or fish tender vessel operatng beyond the Boundary Line, the Secretary shall prescribe regulations for the installation, maintenance, and use of—

(1) at least one readily accessible emergency position indicating beacon, or similar electronic position indicating device;

(2) lifeboats or liferafts sufficient to accommodate all individuals on board;

(3) at least one readily accessible exposure suit required under section 3102 of this title for each individual on board;

(4) radio equipment sufficient to effectively communicate with land-based search and rescue facilities; and

(5) other equipment required to minimize the risk of injury to crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

(c) For an uninspected fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products, the Secretary shall prescribe additional regulations for—

(1) navigation equipment, including radars, fathometers, compasses, radar reflectors, lights, sound-producing devices, nautical charts, and anchors;

(2) life saving equipment, including life preservers, exposure suits, lifeboats or liferafts, emergency position indicating radio beacons, signaling devices, bilge pumps, bilge alarms, life rails and grab rails, and medicine chests;

(3) fire protection and firefighting equipment, including fire alarms, portable and semiportable fire extinguishing equipment, and flame arrestors;

(4) the use and installation of insulation material;

(5) storage methods for flammable or combustible material; and

(6) fuel, ventilation, and electrical systems.

(d)(1) In addition to the other requirements of this section, the Secretary shall prescribe regulations for the operating stability of a documented fishing, fish processing, or fish tender vessel—

(A) the keel for which was laid after December 31, 1987; or

(B) whose physical characteristics are substantially altered after December 31, 1987, in a manner affecting the vessel's operating stability.

(2) The Secretary may accept, as evidence of compliance by a vessel with this subsection, a certification of compliance issued by the person providing insurance for the vessel.

(e) In prescribing regulations under this section, the Secretary—

(1) shall consider the specialized nature and economics of the type of vessel operations and the character, design, and construction of the type of vessel;

(2) shall consult with representatives of the private sector having experience in the operation of vessels to which this chapter applies to ensure the practicability of these regulations; and

(3) may not require the alteration of a vessel or associated equipment or of the construction of a vessel or manufacturer of a particular item of equipment that was begun before the effective date of the regulation.

§ 4503. Equivalency

An uninspected fish processing vessel entered into service after December 31, 1987, and having more than 16 individuals on board primarily employed in the preparation of fish or fish products—

(1) is deemed to comply with the requirements of this chapter if it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention for Safety of Life at Sea to which the United States Government is a party, and

(2) may not be required by the Secretary to alter or replace the equipment or structural requirements required under this chapter.

§ 4504. Prohibited acts

A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

§ 4505. Termination of unsafe operations

If an official charged with the enforcement of this chapter observes a fishing, fish processing, or fish tender vessel being operated in an unsafe condition and, in the judgment of that official, the operation creates an especially hazardous condition, the official may direct the operator of the vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, in-

cluding directing the operator to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

§ 4506. Exemptions

(a) The Secretary may exempt a vessel from any part of this chapter when, under regulations (including regulations on special operating conditions) prescribed by the Secretary, the Secretary finds that—

(1) good cause exists for granting an exemption; and

(2) safety will not be adversely affected.

(b) A fishing, fish processing, or fish tender vessel under 36 feet overall in length that does not operate on the high seas is exempt from the provisions of section 4502(b)(2).

§ 4507. Penalties

(a) If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

(b) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

§ 4508. Commercial Fishing Industry Vessel Advisory Committee

(a) The Secretary shall establish a Commercial Fishing Industry Vessel Advisory Committee. The Committee—

(1) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to the safe operation of fishing, fish processing, and fish tender vessels, including navigation safety, safety equipment and procedures, marine insurance, vessel design, construction, maintenance and operation, and personnel qualifications and training;

(2) may review proposed regulations under this chapter;

(3) may make available to Congress any information, advice, and recommendations that the Committee is authorized to give to the Secretary;

(4) shall meet at the call of the Secretary, but not less than once during each calendar year.

(b)(1) The Committee shall consist of seventeen members with particular expertise, knowledge, and experience regarding the commercial fishing industry as follows:

(A) ten members from the commercial fishing industry who—

(i) reflect a regional and representational balance; and

(ii) have experience in the operation of vessels to which this chapter applies or as a crew member or processing line worker on a fish processing vessel;

(B) three members from the general public, including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of fishing, fish processing, or fish tender vessel and marine insurance interests;

(C) one member from each of the following—

(i) naval architects or marine surveyors;

(ii) manufacturers of fishing, fish processing, or fish tender vessel equipment;

(iii) education or training professional related to fishing, fish processing, or fish tender vessel safety or personnel qualifications; and

(iv) underwriters engaged in insuring fishing, fish processing; or fish tender vessels.

(2) At least once a year, the Secretary shall publish a notice in the Federal Register and in newspapers of general circulation in coastal areas soliciting nominations for membership on the Committee, and, after timely notice is published, appoint the members of the Committee. A member may be appointed to any number of terms.

(3)(A) The term of a member is three years.

(B) If a vacancy occurs in the membership of the Committee, the Secretary shall appoint a member to fill the remainder of the vacated term.

(4) The Committee shall elect one of its members as the Chairman and one of its members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

(5) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to fishing, fish processing, or fish tender vessels under the jurisdiction of their respective agencies. The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 App. U.S.C.).

(c)(1) The Secretary shall, whenever practicable, consult with the Committee before taking any significant action related to the safe operation of fishing, fish processing, or fish tender vessels.

(2) The Secretary shall consider the information, advice, and recommendations of the Committee in consulting with other agencies and the public or in formulating policy regarding the safe operation of fishing, fish processing, or fish tender vessels.

(d)(1) Except an officer or employee of the United States or a member of the Armed Forces, a member of the Committee, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, is entitled to receive—

(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5 including travel time; and

(B) travel or transportation expenses under section 5703 of title 5.

(2) Payments under this section do not render a member of the Committee an officer or employee of the United States or a member of the Armed Forces for any purpose.

(3) A member of the Committee who is an officer or employee of the United States or a member of the Armed Forces may not receive additional pay on account of the member's service on the Committee.

(4) The provisions of this section relating to an officer or employee of the United States or a member of the Armed Forces do not apply to a member of a reserve component of the Armed Forces unless that member is in an active status.

(e)(1) The Federal Advisory Committee Act (5 U.S.C. App.) applies to the Committee, except that the Committee terminates on September 30, 1991.

(2) Two years prior to the termination date in this section, the Committee shall submit to Congress its recommendation whether the Committee should be renewed and continued beyond the termination date.

(CHAPTER 61 OF TITLE 46, UNITED STATES CODE)

CHAPTER 61—REPORTING MARINE CASUALTIES

Sec.
6101. Marine casualties and reporting.
6102. State marine casualty reporting system.
6103. Penalty.
6104. Commercial fishing industry vessel casualty statistics.

§ 6101. Marine casualties and reporting

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§ 6103. Penalty

(a) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to report a casualty as required under section 6101 of this title or a regulation prescribed under section 6101 is liable to the United States Government for a civil penalty of $1,000.

(b) A person violating section 6104 of this title or a regulation prescribed under that section is liable to the Government for a civil penalty of not more than $5,000.

§ 6104. Commerical fishing industry vessel casualty statistics

(a) The Secretary shall compile statistics concerning marine casualties from data compiled from insurers of fishing, fish processing, fish tender vessels.

(b) A person underwriting primary insurance for fishing, fish processing, or fish tender vessels shall submit periodically to the Secretary data concerning marine casualties that is required by regulations prescribed by the Secretary. Information reported to the Secretary under this subsection related to a trade secret or other matter referred to in section 1905 of title 18, or authorized to be exempt from public disclosure by section 552(b) of title 5, is confidential under section 1950. However, the Secretary may release the totals of the statistics that are compiled.

(c) After consulting with the insurance industry, the Secretary shall prescribe regulations under this section to gather a statistical base for analyzing vessel risks.

(16 U.S.C. 1853(a))

§ 1853. Contents of fishery management plans

(a) Required provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b) of this section, or both; and

(C) consistent with the national standards, the other provisions of this chapter, and any other applicable law;

[(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;]

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, the likely effect of the selected and any alternative conservation and management measures on safety of persons and vessels engaged in the fishery, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

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